



**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that Defendants/Counterclaimants Lotte International America Corp. and Lotte Confectionery Co. Ltd. (collectively, “Lotte”), by and through counsel, will move before the Honorable Madeline Cox Arleo, U.S.D.J. on October 15, 2018 for summary judgment on Counts I-V of Plaintiffs Ezaki Glico Kabushiki Kaisha and Ezaki Glico USA Corporation’s (collectively, “Glico”) Second Amended Complaint and Counts I, III and V of Lotte’s Counterclaims. **Lotte requests oral argument on its Motion.**

First, Lotte seeks summary judgment on Counts I-V of Glico’s Second Amended Complaint and Counts I and III of Lotte’s Counterclaims on the ground of functionality. Glico cannot prevail on its claims because the Pocky product configuration is functional as a matter of law and thus is invalid trade dress. Count I of Lotte’s Counterclaims seeks a declaratory judgment that the Pocky product configuration is functional, and Count III of Lotte’s Counterclaims seeks cancellation of Glico’s trademark registration nos. 1,527,208, 1,986,404, and 2,615,119 on those same grounds.

Second, Lotte seeks summary judgment on Counts I-V of Glico’s Second Amended Complaint and Count III of Lotte’s Counterclaims on the ground of abandonment. The evidence is undisputed that Glico abandoned any rights in the Pocky trade dress when it licensed the trade dress to a competitor, but failed to

control the quality of the competitor's licensed products—a phenomenon known as “naked licensing.” Thus, Lotte is entitled to summary judgment on Counts I-V of Glico's Second Amended Complaint, and on Count III of its Counterclaim (which seeks trademark cancellation on the ground of abandonment).

Finally, Lotte moves for summary judgment on Counts I-V of Glico's Second Amended Complaint and Count V of Lotte's Counterclaims based on laches. Glico had actual knowledge of the facts giving rise to its claims for more than 25 years. Glico's decades-long delay in filing suit is inexcusable and has caused extreme prejudice to Lotte. Count V of Lotte's Counterclaims seeks a declaratory judgment that Glico's claims are barred by laches.

In support of its motion, Lotte will rely upon the annexed Memorandum of Law, the Declaration of Sung Sik Eum and exhibits thereto, and the Declaration of Mary Hallerman and Exhibits thereto.

Dated: September 21, 2018

Respectfully submitted,

/s/Riley T. Orloff

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served upon the following counsel of record via email on this 21st day of September, 2018:

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